

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-MD-2724

THIS DOCUMENT RELATES TO:

HON. CYNTHIA M. Rufe

ALL ACTIONS

**REPLY IN SUPPORT OF CERTAIN DEFENDANTS' MOTION FOR CLARIFICATION
REGARDING THE COURT'S JULY 14, 2020 MEMORANDUM AND ORDER
ON BELLWETHER SELECTION**

Indirect Reseller Plaintiffs' ("IRPs"), joined by all other plaintiffs (collectively "Plaintiffs"), fail to offer a single substantive reason to explain why they should be excused from the bellwether process. Nor do they address undersigned Defendants' arguments about why it was correct for the Court to have included them as bellwethers. *See* Pls.' Opp'n at 1-2 (ECF No. 1481).

Plaintiffs fail to address the plain terms of the Court's July 14, 2020 Memorandum and Order, which sensibly included all three categories of putative class plaintiffs in the Court's selected bellwether cases. *See* ECF No. 1442 at 2, 3 (defining the term "Private Plaintiffs" to include "indirect reseller plaintiffs" and requiring "Plaintiffs" to prove that they can meet the standards for class certification under Rule 23); ECF No. 1443 (ordering bellwethers to include "Private Plaintiffs" class-action complaints for Clobetasol, Clomipramine, and Pravastatin).

Plaintiffs also fail to respond to every other argument set forth in Defendants' Motion for Clarification—namely, that including the IRPs in the bellwether cases is consistent with the

Court's purpose in selecting bellwether cases, consistent with the purpose of consolidating the IRPs' complaints in the MDL, and otherwise required as a matter of fundamental fairness. *See* Defendants' Mot. for Clarification (ECF No. 1479) at 2-3 (addressing substantive, fairness, and efficiency concerns).

Indeed, as is made clear from Plaintiffs' response to Defendants' Motion for Clarification, which claims that the Court did not mean what it said in approving the general approach outlined in Special Master Marion's Report and Recommendation, there is no principled reason to exclude the IRPs from the bellwether cases.¹ For these reasons and the reasons stated in Defendants' Motion, Defendants respectfully request that the Court confirm that the IRPs' class-action complaints for Clobetasol, Clomipramine, and Pravastatin are included among the bellwether cases.

¹ Plaintiffs suggest that Defendants agreed in a submission to the Special Master that the IRP cases should not be included among the bellwether cases. *See* Opp'n at 2 (quoting ECF No. 1333 at 15 n.6). Plaintiffs are wrong. Defendants suggested that the IRPs' overarching conspiracy complaint would not be suitable for inclusion with Defendants' proposed Heritage-centric bellwethers given its broader scope, not that IRPs should be omitted from the individual product bellwethers. Indeed, Plaintiffs acknowledge, as they must, that Defendants have consistently maintained that it "makes no sense" to omit the IRPs from individual product bellwethers. *See* Opp'n at 2 (quoting ECF No. 1353 at 14 n.14).

Date: August 13, 2020

/s/ Sheron Korpus

Sheron Korpus
Seth A. Moskowitz
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Tel: (212) 506-1700
Fax: (212) 506-1800
skorpus@kasowitz.com
smoskowitz@kasowitz.com

*Counsel for Actavis Holdco U.S., Inc. and
Actavis Pharma, Inc.*

/s/ Raymond A. Jacobsen, Jr.

Raymond A. Jacobsen, Jr.
Paul M. Thompson
Lisa A. Peterson
MCDERMOTT WILL & EMERY LLP
500 N. Capitol St., NW
Washington, D.C. 20001
202-756-8000
rayjacobsen@mwe.com
pthompson@mwe.com
lpeterson@mwe.com

Nicole L. Castle
MCDERMOTT WILL & EMERY LLP
340 Madison Ave.
New York, NY 10173
212-547-5400
ncastle@mwe.com

*Counsel for Amneal Pharmaceuticals, Inc.
and Amneal Pharmaceuticals LLC*

Respectfully submitted,

/s/ James W. Matthews

James W. Matthews
Katy E. Koski
John F. Nagle
FOLEY & LARDNER LLP
111 Huntington Avenue
Boston, Massachusetts 02199
Tel: (617) 342-4000
Fax: (617) 342-4001
jmatthews@foley.com
kkoski@foley.com
jnagle@foley.com

James T. McKeown
Elizabeth A. N. Haas
Kate E. Gehl
FOLEY & LARDNER LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202
Tel: (414) 271-2400
Fax: (414) 297-4900
jmckeown@foley.com
ehaas@foley.com
kgehl@foley.com

Steven F. Cherry
April N. Williams
Claire Bergeron
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Tel: (202) 663-6000
Fax: (202) 663-6363
steven.cherry@wilmerhale.com
april.williams@wilmerhale.com
claire.bergeron@wilmerhale.com

Terry M. Henry
Melanie S. Carter
BLANK ROME LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Tel: (215) 569-5644
Fax: (215) 832-5644

Counsel for Defendant Apotex Corp.

/s/ Brian T. Feeney

Brian T. Feeney
GREENBERG TRAURIG, LLP
1717 Arch Street Suite 400 Philadelphia, PA
19103 Tel.: (215) 988-7812 Fax: (215) 717-
5265 feeneyb@gtlaw.com

Roger B. Kaplan
GREENBERG TRAURIG, LLP
500 Campus Drive, Suite 400
Florham Park, NJ 07932-0677
Tel.: (973) 360-7957
Fax: (973) 295-1257 kaplanr@gtlaw.com

Counsel for Dr. Reddy's Laboratories, Inc.

/s/ Steven A. Reed

Steven A. Reed
R. Brendan Fee
Melina R. DiMattio
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: +1.215.963.5000
Facsimile: +1.215.963.5001
steven.reed@morganlewis.com
brendan.fee@morganlewis.com
melina.dimattio@morganlewis.com

Wendy West Feinstein
MORGAN, LEWIS & BOCKIUS LLP
One Oxford Centre
Thirty-Second Floor
Pittsburgh, PA 15219-6401
Telephone: +1.412.560.7455
Facsimile: +1.412.560.7001
wendy.feinstein@morganlewis.com

*Counsel for Defendant
Glenmark Pharmaceuticals Inc., USA*

/s/ Leiv Blad

Leiv Blad
Zarema Jaramillo
Ario Fazli
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue
Washington, DC 20037
Tel.: (202) 753-3800
Fax: (202) 753-3838
lblad@lowenstein.com
zjaramillo@lowenstein.com
afazli@lowenstein.com

Attorneys for Lupin Pharmaceuticals, Inc.

/s/ Brian J. Smith

Michael Martinez
Steven Kowal
Lauren Norris Donahue
Brian J. Smith
K&L GATES LLP
70 W. Madison St., Suite 3300
Chicago, IL 60602
Tel.: (312) 372-1121
Fax: (312) 827-8000
michael.martinez@klgates.com
steven.kowal@klgates.com
lauren.donahue@klgates.com
brian.j.smith@klgates.com

Counsel for Mayne Pharma Inc.

/s/ Chul Pak

Chul Pak
WILSON SONSINI GOODRICH & ROSATI, PC
1301 Avenue of the Americas 40th Floor
New York, New York 10019
Tel: (212) 497-7726
Fax: (212) 999-5899
cpak@wsgr.com

Seth C. Silber
Jeffrey C. Bank
WILSON SONSINI GOODRICH & ROSATI, PC
1700 K Street, NW Fifth Floor
Washington, DC 20006
Tel: (202) 973-8824
Fax: (202) 973-8899
ssilber@wsgr.com
jbank@wsgr.com

Adam K. Levin
Benjamin F. Holt
Justin W. Bernick
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
adam.levin@hoganlovells.com
benjamin.holt@hoganlovells.com
justin.bernick@hoganlovells.com

Counsel for Defendants Mylan Inc., Mylan Pharmaceuticals, Inc., UDL Laboratories, Inc., and Mylan N.V

/s/ John E. Schmidlein

John E. Schmidlein
Sarah F. Kirkpatrick
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Phone: (202) 434-5000
Fax: (202) 434-5029
jschmidlein@wc.com
skirkpatrick@wc.com

Attorneys for Par Pharmaceutical, Inc.

/s/ Erik T. Koons

John M. Taladay
Erik T. Koons
Stacy L. Turner
Christopher P. Wilson
BAKER BOTTS LLP
700 K Street NW
Washington, DC 20001
Telephone: (202) 639-7700
Facsimile: (202) 639-7890
john.taladay@bakerbotts.com
erik.koons@bakerbotts.com
stacy.turner@bakerbotts.com
christopher.wilson@bakerbotts.com

Lauri A. Kavulich
Ann E. Lemmo
CLARK HILL PLC
2001 Market St, Suite 2620
Philadelphia, PA 19103
Telephone: (215) 640-8500
Facsimile: (215) 640-8501
lkavulich@clarkhill.com
alemmo@clarkhill.com

Lindsay S. Fouse
CLARK HILL PLC
301 Grant St, 14th Floor
Pittsburgh, PA 15219
Telephone: (412) 394-7711
Facsimile: (412) 394-2555
lfouse@clarkhill.com

Counsel for Defendants Sun Pharmaceutical Industries, Inc., Mutual Pharmaceutical Company, Taro Pharmaceutical Industries, Ltd., and Taro Pharmaceuticals U.S.A., Inc.

/s/ J. Clayton Everett, Jr.

Scott A. Stempel
J. Clayton Everett, Jr.
Tracey F. Milich
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
scott.stempel@morganlewis.com
clay.everett@morganlewis.com
tracey.milich@morganlewis.com

Harvey Bartle IV
Francis A. DeSimone
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Phone: (215) 963-5000
Fax: (215) 963-5001
harvey.bartle@morganlewis.com
frank.desimone@morganlewis.com

Counsel for Defendant Perrigo New York, Inc.

/s/ Ilana H. Eisenstein
DLA PIPER LLP (US)
Ilana H. Eisenstein
Ben C. Fabens-Lassen
1650 Market Street, Suite 5000
Philadelphia, PA 19103
Tel: (215) 656-3300
ilana.eisenstein@dlapiper.com
ben.fabens-lassen@dlapiper.com

Edward S. Scheideman
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, D.C. 20004
Tel: (202) 799-4000
edward.scheideman@dlapiper.com

Counsel for Pfizer Inc. and Greenstone LLC

/s/ Saul P. Morgenstern
Saul P. Morgenstern
Margaret A. Rogers
ARNOLD & PORTER
KAYE SCHOLER LLP
250 W. 55th Street
New York, NY 10019
Tel: (212) 836-8000
Fax: (212) 836-8689
saul.morgenstern@arnoldporter.com
margaret.rogers@arnoldporter.com

Laura S. Shores
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue
Washington, DC 20001
Tel: (202) 942-5000
Fax: (202) 942-5999
laura.shores@arnoldporter.com

Counsel for Sandoz and Fougera Pharmaceuticals, Inc.

/s/ J. Gordon Cooney, Jr.

J. Gordon Cooney, Jr.
John J. Pease, III
Alison Tanchyk
William T. McEnroe
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-5000
Fax: (215) 963-5001
jgcooney@morganlewis.com
john.pease@morganlewis.com
alison.tanchyk@morganlewis.com
william.mcenroe@morganlewis.com

Amanda B. Robinson
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001
amanda.robinson@morganlewis.com

*Counsel for Defendant Teva
Pharmaceuticals USA, Inc.*

/s/ Jason R. Parish

Jason R. Parish
Martin J. Amundson
**BUCHANAN INGERSOLL & ROONEY
PC**
1700 K Street, NW
Washington, D.C. 20006
Telephone: (202) 452-7900
jason.parish@bipc.com
martin.amundson@bipc.com

Bradley Kitlowski
**BUCHANAN INGERSOLL & ROONEY
PC**
Union Trust Building
501 Grant Street
Pittsburgh, PA 15219
Telephone: (412) 562-8800
bradley.kitlowski@bipc.com

*Counsel for Defendant Zydus
Pharmaceuticals (USA) Inc.*

/s/ Damon W. Suden

William A. Escobar
Damon W. Suden
Clifford Katz
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, NY 10178

*Counsel for Wockhardt USA LLC and
Morton Grove Pharmaceuticals, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I caused a copy of the foregoing Reply in Support of Motion for Clarification Regarding the Court's July 14, 2020 Memorandum and Order on Bellwether Selection to be served on counsel of record via the Court's CM/ECF system.

/s/ William T. McEnroe
William T. McEnroe

*Counsel for Defendant Teva
Pharmaceuticals USA, Inc.*